

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MONTREAL D. FERRELL,	§	
Petitioner,	§	
	§	
v.	§	NO. 3:05-CV-1025-B
	§	
DOUG DRETKE, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b) and an order of the District Court in implementation thereof, the subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendations of the Magistrate Judge, as evidenced by his signature thereto, are as follows:

FINDINGS AND CONCLUSIONS

Type Case: This is a petition for habeas corpus relief filed by a state inmate.

Statement of the Case: This case was filed on May 13, 2005 by Steven-Scott Wass on behalf of the Petitioner. Process has not been issued in this case. However, on June 13, 2005, this court issued an order directing Steven-Scott Wass to provide his State Bar of Texas license number, along with an application for admission to the Northern District of Texas or, in the alternative, an amended habeas petition signed by either the petitioner or an attorney as defined by Local Rule 1.1(c)(1) who is licenced to practice in the Northern District of Texas. As of the date of this recommendation, no response has been filed to this court's order of June 13, 2005.


Findings and Conclusions: Rule 11(a), of the Federal Rules of Civil Procedure, provides that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party." As of the date of this recommendation, Wass has not responded to this court's order, no petition has been submitted by signed by an attorney, nor has the Petitioner submitted a petition with his own signature. Therefore, the petition should be dismissed for failure to comply with Rule 11(a). *Accord Wash v. Johnson*, 343 F.3d 685 (5th Cir. 2003). Alternatively Ferrell should be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. Rule 41(b) for failing to comply with the order filed on June 13, 2005. *See Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir.1998)(Rule 41(b)allows a court to dismiss an action sua sponte for failure to prosecute or for failure to comply with the federal rules or any court order).

RECOMMENDATION:

For the foregoing reasons it is recommended that the District Court dismiss the petition for failure to comply with Fed. R. Civ. P. 11(a), or, in the alternative, under Fed. R. Civ. P. 41(b).

A copy of this recommendation shall be transmitted to the Steven-Scott Wass.

SIGNED this 28th day of July, 2005.


Wm. F. Sanderson Jr.
United States Magistrate Judge

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten (10) days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Serv. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten (10) day period may bar a *de novo* determination by the district judge of any finding of fact and conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.